IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

I.T.A No. 466 of 2001
(Old no. 308/2000)

The Commissioner of Income-tax,
Meerut & another ……. Appellants

Vs.

Shri Devendra Pal Singh Vigyani,
Prop. Vigyani Press, Laxman Jhula Road
Rishikehs …… Respondent

Mr. P. Maulkhi, Counsel for the appellants.
None appeared for the respondent, though served.

Coram: Hon'ble S.H. Kapadia, C.J.
Hon'ble M.M. Ghildiyal, J.

Date: 14th October, 2003,

ORAL JUDGEMENT : (Hon'ble S.H. Kapadia, C.J)

1. Being aggrieved by judgment and order dated 16th February 2000 the department has come by way of appeal u/s 260A of the Income Tax Act of assessment year 1987-88.

2. **FACTS:**

During the accounting year ending 31st March 1987, the assessee sold 4.92 Acres out of 5.6 Acres of land For Rs. 33.50 lacs. Before the A.O it was argued on behalf of the assessee that the lands were agricultural lands. This was rejected by the A.O. Capital gains was assessed at Rs. 16.70 lacs by the A.O. in

the original assessment proceedings. Being aggrieved the assessee preferred appeal to CIT (A). The said appeal was allowed. The matter was remanded to the A.O to decide whether that land in questions was an agricultural land. In the re-assessment proceedings, the A.O came to the conclusion that the land was not suitable for agriculture and accordingly he asseseed the net capital gain at Rs. 16.70 lacs. Being aggrieved by the order passed by the A.O in re-assessment proceedings, the assessee preferred appeal to CIT(A). The appeal was accepted on the ground that lands in questions were agricultural lands and therefore no capital gains were assessable. Being aggrieved by the order passed by the CIT (A) the department carried the matter in appeal to the Tribunal which has confirmed the decision of CIT (A). Being aggrieved the department has come in appeal u/s 260 A of the Income Tax Act.

3. <u>ARGUMENTS:-</u>

Mr. Maulkhi, learned Counsel appearing for the department contended that the land in questions was urban agricultural land and therefore the income derived by the assessee on sale of such land was assessable to tax under the head" Capital Gains." He, therefore, argued that the Tribunal was wrong in coming to the conclusion that no capital gains were assessable.

4. **QUESTION:**

On the above facts the Allahabad High Court has framed the following question for our determination prior to 9th November 2000:

> " Whether, the Tribunal was right in holding that the land sold by the assessee was agricultural land on the date of the sale and therefore not exigible to capital gains tax during the assessment year 1987-88."

5. **OUR ANSWER:**

In this case, the CIT (A) and the Tribunal have recorded a concurrent finding of fact namely that the land in questions was an agricultural land on the date of transfer. We have perused the entire record. The argument advanced on behalf of the department that the land in questions was an urban agricultural land was not raised before any of the Authorities below. This argument is raised for the first time before us. This argument requires facts to be established by the department. Hence, we cannot permit the department to raise this point for the first time before the High Court. Lastly, the above finding namely that the land in question was an agricultural land on the date of the transfer is a pure finding of fact. Hence, no substantial ground of appeal arises u/s 260 A of the Income Tax Act.

6. For the above reasons, the appeal stands dismissed with no order as to costs.

(**M.M. Ghildiyal, J.**) **(S.H. Kapadia, C.J)**

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